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10/609,183	06/26/2003	Christopher Forrest Harvey	085804-012201	7640

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EXAMINER

DALENCOURT, YVES

ART UNIT	PAPER NUMBER
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2157

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08/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/609,183	Applicant(s) HARVEY ET AL.	
	Examiner Yves Dalencourt	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/24/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 17, 18 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/01/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to amendment filed on 04/24/2008.

Response to Amendment

The Examiner has acknowledged the amended claims 1, 9, 19, and 27.

Response to Arguments

Applicant's arguments with respect to claims 1 – 16 and 19 - 27 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

This application contains claims 17, 18, and 28 drawn to an invention nonelected with traverse in the reply filed on **08/30/2006**. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 9, 19, and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 1, 9, 19, and 27, the limitation of “ wherein said frame rate being scalable in accordance with a number of dropped frames comprises said frame rate being scalable at least in part by dropping at least some frames such that said dropped frames are not sent to said first user “ (claim 1, lines 14-17; claims 9 and 19, lines 8-11; claim 27, lines 9-12) is not described in the specification. It has not been disclosed how such limitation is taken place. Therefore, one skilled in the art would not know how to make and/or use the invention. Applicant’s representative has mentioned in his remarks (page 9, second paragraph) that the added limitation to the claims is clearly supported in the specification at least in paragraphs 0078 – 0080. However, The Examiner has carefully reviewed such passage, and was unable to see how the added limitation of “ wherein said frame rate being scalable in accordance with a number of dropped frames “**comprises said frame rate being scalable at least in part by dropping at least some frames** such that said dropped frames are not sent to said first user”, as being recited in the claims, is being clearly supported by the specification.

Applicant's representative is encouraged to either call or respond to the rejection to clarify how such limitation is being interpreted in order to be supported by the specification (paragraphs [0078 – 0080].

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 9, 19, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 9, 19, and 27, the limitation of “ wherein said frame rate being scalable in accordance with a number of dropped frames comprises said frame rate being scalable at least in part by dropping at least some frames such that said dropped frames are not sent to said first user “ (claim 1, lines 14-17; claims 9 and 19, lines 8-11; claim 27, lines 9-12) is confusing. It is not clear to how the frame rate being scalable in accordance with a number of dropped frames “**comprises said frame rate being scalable at least in part by dropping at least some frames** such that said dropped frames are not sent to said first user”?

Claims 2 – 8, 10, 16, and 20 – 26 are necessarily rejected as being dependent upon the rejection of claims 1, 9, and 19.

Thus, in view of such, the previous rejection has been maintained since the Examiner has not given any patentable weight to the added limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-16 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. US Patent No. 6, 677, 976 (herein referred to as "Parker") in view of Lowthert US Patent No. 5,832,300 in further view of Okazaki et al. US Patent No. 5,819,048.

Parker teaches the invention as claimed including establishing a communication session between separate users (see abstract). Lowthert teaches the invention as claimed including sending images to clients (see abstract).

As per claim 1, Parker teaches a method comprising: associating a first user with a first user ID (identifying a user by a user ID; column 4, o lines 28-67; column 5, lines 1-10, column 5, lines 53-65; column 7, lines 56-67); associating a instant message with the first user ID (sending the instant message to the correct user based on the user ID; column 4, lines 59-67; column 5, lines 1-10; column 5, lines 53-65); associating an

image with the first user ID (column 4, lines 59-67; column 5, lines 11-15; column 5, lines 53-65; column 7, lines 56-67); causing the instant message to be communicated to the first user from a second user based on the first user ID (sending the instant message to the first user based on the user ID; column 4, lines 59-67; column 6, lines 13-30; column 7, lines 24-35); and causing the image to be communicated to the first user from the second user based on the first user ID (linking the image with the user based on the user ID; column 4, lines 59-67; column 6, lines 13-30; column 7, lines 56-67); wherein the first user is able to receive both the instant message and image from the second user, the image being communicated at a frame rate (second user sending IM and images to the first user; column 4, lines 59-67; column 6, lines 13-30; column 6, lines 3-30; column 6, lines 55-67, image communicated at a frame rate, column 5, lines 10-15).

Parker does not teach at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user.

Lowthert teaches at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user. See column 4, lines 20-31.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the video conference of Parker with the image quality and frame rate of Lowthert. A person of ordinary skill in the art would have been motivated to do this to enhance communication based on certain exchange parameters (column 5,

lines 1-5). Also, Parker suggests that the video telephony system is described in more detail in the copending applications (see column 4, lines 59-62).

Parker and Lowthert do not teach said frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received.

Okazaki teaches a frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received. See column 3, lines 50-65. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the video conference of Parker with the scalable frame rate of Okazaki. A person of ordinary skill in the art would have been motivated to do this to provide an information data processing apparatus for preventing a transmission of information data that results in a vain use of a processing ability of a CPU or the like and for enabling the information data of a proper amount of data according to a situation to be transmitted (Okazaki, column 2, lines 1-8).

As per claims 9 and 19, Parker teaches a method comprising: initiating one or more server connections between a broadcaster computer and a first viewer computer via one or more application servers, the connections for passing an image and an instant message (going through a central server and requesting a session; column 5, lines 1- 15; column 5, lines 53-65; column 6, lines 3-30; column 6, lines 55-67); receiving an indication to establish a peer-to-peer connection between the broadcaster computer and the first viewer computer, the peer-to-peer connection for passing the image (the central server allows the user to have direct communication; column 5, lines

1-55; column 5, lines 53-65; column 6, lines 3-30; column 7, lines 1-15); and routing the image over the peer-to-peer connection instead of the server connections, thereby conserving bandwidth of the servers (sending all data across the direct connection; column 5, lines 1-15; column 5, lines 53-65; column 6, lines 3-30).

Parker does not teach at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and broadcaster computer, said frame rate being scalable in accordance with a number of dropped frames on whether a previous image has been received.

Lowthert teaches at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said broadcaster computer, said frame rate being scalable in accordance with a number of dropped frames on whether a previous image has been received. See column 4, lines 20-31.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the video conference of Parker with the image quality and frame rate of Lowthert. A person of ordinary skill in the art would have been motivated to do this to enhance communication based on certain exchange parameters (column 5, lines 1-5). Also, Parker suggests that the video telephony system is described in more detail in the copending applications (see column 4, lines 59-62).

Parker and Lowthert do not teach said frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received.

Okazaki teaches a frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received. See column 3, lines 50-65.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the video conference of Parker with the scalable frame rate of Okazaki. A person of ordinary skill in the art would have been motivated to do this to provide an information data processing apparatus for preventing a transmission of information data that results in a vain use of a processing ability of a CPU or the like and for enabling the information data of a proper amount of data according to a situation to be transmitted (Okazaki, column 2, lines 1-8).

As per claim 2, Parker teaches the method of claim 1, wherein the second user uses a broadcaster computer and the first user uses first viewer computer, the method further comprising: receiving a request to initiate one or more server connections between the broadcaster computer and the first viewer computer, the connections for-passing the image (going through a central server and requesting a session; column 5, lines 1-15; column 5, lines 53-65; column 6, lines 3-30; column 6, lines 55-67); facilitating a peer-to-peer connection between the broadcaster computer and the first viewer computer, the peer-to-peer connection for passing the image (the central server allows the user to have direct communication; column 5, lines 1-55; column 5, lines 53-65; column 6, lines 3-30; column 7, lines 1-15); and facilitating communication of the image over the peer-to-peer connection instead of the server connections, thereby

conserving bandwidth of the servers (sending all data across the direct connection; column 5, lines 1-15; column 5, lines 53-65; column 6, lines 3-30).

As per claim 3, Parker teaches the method of claim 2, further comprising: receiving control data for the image from the broadcaster computer (column 7, lines 24-35).

As per claims 4, 12 and 22 Parker teaches the method of claims 2, 11, and 19, wherein a third user uses a second viewer computer, further comprising, after passing the image from the broadcaster computer to the first viewer computer: passing a request to view the image from a second viewer computer to the broadcaster computer (sending a request to a central computer to a user; column 6, lines 30-54; column 7, line 1-15; column 8, lines 31-67); and facilitating the reestablishing of a first server connection between the broadcaster computer and the first viewer computer for passing the image in response to receiving the second viewer computer request (column 6, lines 30-54; column 7, line 1-15; column 8, lines 31-67); and facilitating a second server connection between the broadcaster computer and the second viewer computer for passing the image, thereby permitting both the first viewer computer and the second viewer computer to receive the image (column 6, lines 30-54; column 7, line 1-15; column 8, lines 31-67).

As per claims 5, 13, and 23, Parker teaches the method of claims 4, 12 and 22, wherein the reestablishing is in response to the broadcaster computer receiving approval from the second user (column 6, lines 13-30; column 8, lines 1-15, lines 23-36).

As per claims 6, 14 and 24 Parker teaches the method of claims 5, 12 and 22, wherein the third user is on an approved list (column 6, lines 13-30; column 8, lines 1-15, lines 23-36).

As per claims 7, 15 and 25 Parker teaches the method of claims 4, 11 and 22, further comprising: maintaining the peer-to-peer connection during existence of the server connection to the second viewer computer; terminating the second server connection; and facilitating the passing of the image over the peer-to-peer connection in response to termination of the second server connection (maintaining a direct connection between two users; column 6 lines 55-67; column 7, lines 1-15; column 8, lines 37-52).

As per claims 8 and 26, Parker teaches the method of claims 1 and 25, further comprising: associating a second user ID with the second user; wherein causing the instant message to be communicated to the first user is further based on the second user ID (column 6, lines 30-54; column 8, lines 1-15, 23-36).

As per claim 10, Parker teaches the method of claim 9, wherein the server connections with the application servers are for passing control data for the image (sending packet header information; column 6, lines 31-54).

As per claims 11 and 16, Parker teaches the method of claims 10 and 15, wherein the server connections are further for passing an instant message (column 8, lines 1-15).

As per claim 20, Parker teaches the method of claim 19, further comprising: receiving control data for the image from the broadcaster computer (sending packet header information; column 8, lines 37-52).

As per claim 21, Parker teaches the method of claim 20, further comprising: passing an instant message from the broadcaster computer to the first viewer computer (column 8, lines 37- 50).

Claim 27 is rejected under 35 U.S.C. 103(a) as being anticipated by Fukasawa et al. US Patent No. 6,377,989 in view of Okazaki et al. US Patent No. 5,819,048.

Fukasawa teaches the invention as claimed including a method for transferring images. Fukasawa teaches a method comprising: passing a first image of a series of images from a broadcaster computer to a first viewer computer(the image server sending image to image client; column 9, lines 11-14; column 1, lines 18-35); detecting an indication from the first viewer computer as to whether the first image has been received (transmit Ack message...to image server; column 6, lines 58-64; column 9, lines 15-20); and passing a second image of the series of images if the first image has been received (column 9, lines 21-30).

Fukasawa does not teach said frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received. Okazaki teaches a frame rate being scalable in accordance with a number of dropped frames depending on whether a previous image has been received. See column 3, lines 50-65. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the video conference of Parker with the scalable frame rate of

Okazaki. A person of ordinary skill in the art would have been motivated to do this to provide an information data processing apparatus for preventing a transmission of information data that results in a vain use of a processing ability of a CPU or the like and for enabling the information data of a proper amount of data according to a situation to be transmitted (Okazaki, column 2, lines 1-8).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (571) 272-3998. The examiner can normally be reached on M-TH 7:30AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272 4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 1, 2008

/Yves Dalencourt/
Primary Examiner, Art Unit 2157